

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20244
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On May 14, 2007, the Income Tax Audit Bureau (Audit) of the Idaho State Tax Commission issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing additional individual income tax, penalty, and interest in the total amount of \$1,120 for tax years 2004 through 2006.

The taxpayer filed a timely appeal and petition for redetermination. He did not submit additional information or request a conference. The Tax Commission has reviewed the file and hereby issues its decision.

Audit reviewed the taxpayer's federal and state income tax returns for tax years 2004 through 2006. The taxpayer received refunds of Idaho taxes in the amount of \$716 for 2004, \$770 for 2005, and \$1,513 for 2006. In all three returns, the taxpayer claimed an adult dependent as a tax exemption. The taxpayer was asked to provide evidence that the adult claimed as a dependent could pass the relationship test required in Internal Revenue Code § 152.

The second issue addressed by Audit was that of the exemptions claimed in the taxpayer's 2005 return for his two children. Because the children's other parent, the custodial parent, claimed the children as exemptions also, the taxpayer was asked to provide a copy of his federal Form 8332 or his divorce decree. The taxpayer did not have a federal Form 8332 signed by the other parent that gave him the right to claim the children as exemptions for 2005. The divorce decree the taxpayer provided did not meet the three requirements of Internal Revenue

Code § 152 for using the divorce decree as an authorizing document for claiming the two children as dependents.

Audit prepared and sent a NODD that the taxpayer appealed. After being provided with a copy of Internal Revenue Code § 152, the taxpayer conceded the adult dependent did not meet the relationship test. The taxpayer's file was transferred to the Legal/Tax Policy Division for administrative review. The taxpayer did not respond to a letter advising him of his appeal rights and has submitted nothing to dispute the determination.

Internal Revenue Code § 152(e) states the non-custodial parent must attach a federal Form 8332 or pages from a divorce decree that must include:

- The cover page (write the other parent's social security number on this page).
- The pages that include all of the information identified:
 - The non-custodial parent can claim the child as a dependent without regard to any conditions, such as payment of support.
 - The custodial parent will not claim the child as a dependent for the year.
 - The years for which the non-custodial parent, rather than the custodial parent, can claim the child as a dependent.
- The signature page with the other parent's signature and the date of the agreement.

The Tax Commission has reviewed the taxpayer's divorce decree. The decree does not appear to comply with the requirements stated in Internal Revenue Code § 152 for a non-custodial parent to claim the dependent exemptions for 2005. The decree is not specific about the years the taxpayer can claim the children and does not state the children's other parent will not claim the children. The order for child support suggests the right to claim the children is dependent on the child support being current. Although the taxpayer later brought the child support current, he was behind on the child support in 2005.

A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Com'n, 110 Idaho 572 (Ct. App. 1986). The burden is on the taxpayer to show that the tax deficiency is erroneous. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984). The taxpayer has not met his burden of proof.

WHEREFORE, the Notice of Deficiency Determination dated May 14, 2007, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest for 2004 through 2006:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2004	\$229	\$41	\$ 270
2005	550	65	615
2006	258	14	<u>272</u>
		TOTAL	\$1,157

Interest is computed through January 31, 2008.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner's right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2008, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.
